

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 603

Introduced by Assembly Member Price

February 25, 2009

An act to ~~amend Section 2924 of~~ *add and repeal Sections 1940.97 and 2924.9 of the Civil Code*, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 603, as amended, Price. Mortgages and deeds of trust: ~~foreclosure.~~
foreclosure: tenants in possession of property.

Existing law governs foreclosure proceedings, including requiring specified notice to residents of property subject to a foreclosure sale. Existing law also governs residential tenancies.

This bill would prohibit, until January 1, 2013, an owner of a qualified rental unit, as defined to mean real property that is rented or leased for residential purposes whose owner acquired the property as a result of a default on a mortgage, as specified, from taking action to terminate any tenancy within one year of acquiring ownership, as specified, except under certain circumstances, including the failure of a tenant to pay rent or a violation of a condition of the tenancy, as described. The bill would also provide that a landlord who violates this provision would be liable to the tenant in a civil action for actual damages and a fine not to exceed \$100 for each day the landlord remains in violation of this provision, but not less than \$250 for each separate cause of action. The bill would authorize a court to award reasonable attorney's fees to the prevailing party, and would authorize a tenant to seek injunctive relief, as specified.

~~Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1940.97 is added to the Civil Code, to
2 read:

3 1940.97. (a) An owner of a qualified rental unit shall not take
4 action to terminate any tenancy within one year of acquiring
5 ownership, including, but not limited to, making a demand for
6 possession of a rental unit, threatening to terminate a tenancy,
7 serving a notice to quit or other eviction notice, or bringing an
8 action to recover possession or to be granted recovery of
9 possession of a qualified rental unit, unless one of the following
10 applies:

11 (1) The tenant has not paid the rent due. The rent does not
12 become due within the meaning of this paragraph until the owner
13 has served the tenant a written notice informing the tenant of the
14 location where, and the manner in which, the tenant shall pay the
15 rent. The owner may not retroactively demand or collect rent for
16 rental periods before service of this notice.

17 (2) The tenant has violated a condition or covenant of the
18 tenancy, other than the obligation to surrender possession upon
19 proper notice, and has failed to cure the violation after having
20 received written notice thereof from the owner.

21 (3) The tenant is committing waste upon the premises, contrary
22 to the conditions or covenants of his or her lease, is maintaining,
23 committing, or permitting the maintenance or commission of a
24 nuisance upon the premises, or is using the premises for an
25 unlawful purpose.

26 (4) The owner is a natural person who seeks in good faith to
27 recover possession of the qualified rental unit for use and
28 occupancy by his or her spouse, child, parent, or grandparent.
29 The owner may use this ground only once for each spouse, child,
30 parent, or grandparent.

1 ***(b) The owner shall comply with the procedural and notice***
2 ***requirements of the law of this state, including Section 1161 of the***
3 ***Code of Civil Procedure, before pursuing an unlawful detainer***
4 ***action.***

5 ***(c) If the prior owner was responsible for maintaining utility***
6 ***services, the owner of a qualified rental unit shall ensure that***
7 ***utility services to the units are not interrupted or terminated.***

8 ***(d) The owner of a qualified housing unit shall comply with the***
9 ***notification requirements of Section 1962 of the Code of Civil***
10 ***Procedure.***

11 ***(e) (1) A landlord who violates this section shall be liable to***
12 ***the tenant in a civil action for all of the following:***

13 ***(A) Actual damages incurred by the tenant.***

14 ***(B) An amount not to exceed one hundred dollars (\$100) for***
15 ***each day or part thereof the landlord remains in violation of this***
16 ***section. In determining the amount of the award, the court shall***
17 ***consider proof of matters as justice may require; however, in no***
18 ***event shall less than two hundred fifty dollars (\$250) be awarded***
19 ***for each separate cause of action. Each subsequent or repeated***
20 ***violation, which is not committed contemporaneously with the***
21 ***initial violation, shall be treated as a separate cause of action and***
22 ***shall be subject to a separate award of damages.***

23 ***(2) In any action brought pursuant to this section, the court***
24 ***shall award reasonable attorney's fees to the prevailing party.***
25 ***The tenant may seek appropriate injunctive relief to prevent***
26 ***continuing or further violation of the provisions of this section***
27 ***during the pendency of the action. The remedy provided by this***
28 ***section is not exclusive and does not preclude the tenant from***
29 ***pursuing any other remedy which the tenant may have under any***
30 ***other provision of law.***

31 ***(f) Nothing in this section shall be construed to affect the***
32 ***authority of a public entity to take any other action that is***
33 ***authorized by law to regulate the grounds for eviction, and this***
34 ***section shall not, and shall not be construed to, preempt any local***
35 ***ordinance governing the rights of tenants. This section is not***
36 ***intended and it shall not be construed to be a limitation or***
37 ***constraint on the authority or ability of a local government, as***
38 ***may otherwise be provided by law, to require or provide tenant***
39 ***protections in addition to the requirements of this section.***

1 (g) For purposes of this section, a “qualified rental unit” means
2 real property that is rented or leased for residential purposes,
3 including a single-family dwelling, duplex, apartment,
4 condominium, cooperative, or townhouse, whose owner acquired
5 the property at a trustee’s sale or a sale held pursuant to a judicial
6 foreclosure proceeding, or through a deed in lieu of foreclosure,
7 including a sale of property under the power of sale contained in
8 any deed of trust or mortgage.

9 (h) This section shall remain in effect only until January 1, 2013,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2013, deletes or extends that date..

12 SEC. 2. Section 2924.9 is added to the Civil Code, to read:

13 2924.9. (a) Notwithstanding any other provision of law, if
14 residential real property that is rented or leased for residential
15 purposes is acquired pursuant to a trustee’s sale or a sale of
16 foreclosure, Section 1940.97 shall apply.

17 (b) This section shall remain in effect only until January 1, 2013,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2013, deletes or extends that date.

20 SECTION 1. ~~Section 2924 of the Civil Code is amended to~~
21 ~~read:~~

22 ~~2924. (a) Every transfer of an interest in property, other than~~
23 ~~in trust, made only as a security for the performance of another~~
24 ~~act, is to be deemed a mortgage, except when in the case of~~
25 ~~personal property it is accompanied by actual change of possession,~~
26 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
27 ~~created after July 27, 1917, of any estate in real property, other~~
28 ~~than an estate at will or for years, less than two, or in any transfer~~
29 ~~in trust made after July 27, 1917, of a like estate to secure the~~
30 ~~performance of an obligation, a power of sale is conferred upon~~
31 ~~the mortgagee, trustee, or any other person, to be exercised after~~
32 ~~a breach of the obligation for which that mortgage or transfer is a~~
33 ~~security, the power shall not be exercised except if the mortgage~~
34 ~~or transfer is made pursuant to an order, judgment, or decree of a~~
35 ~~court of record, or to secure the payment of bonds or other~~
36 ~~evidences of indebtedness authorized or permitted to be issued by~~
37 ~~the Commissioner of Corporations, or is made by a public utility~~
38 ~~subject to the provisions of the Public Utilities Act, until all of the~~
39 ~~following apply:~~

1 ~~(1) The trustee, mortgagee, or beneficiary, or any of their~~
2 ~~authorized agents shall first file for record, in the office of the~~
3 ~~recorder of each county wherein the mortgaged or trust property~~
4 ~~or some part or parcel thereof is situated, a notice of default. That~~
5 ~~notice of default shall include all of the following:~~

6 ~~(A) A statement identifying the mortgage or deed of trust by~~
7 ~~stating the name or names of the trustor or trustors and giving the~~
8 ~~book and page, or instrument number, if applicable, where the~~
9 ~~mortgage or deed of trust is recorded or a description of the~~
10 ~~mortgaged or trust property.~~

11 ~~(B) A statement that a breach of the obligation for which the~~
12 ~~mortgage or transfer in trust is security has occurred.~~

13 ~~(C) A statement setting forth the nature of each breach actually~~
14 ~~known to the beneficiary and of his or her election to sell or cause~~
15 ~~to be sold the property to satisfy that obligation and any other~~
16 ~~obligation secured by the deed of trust or mortgage that is in~~
17 ~~default.~~

18 ~~(D) If the default is curable pursuant to Section 2924c, the~~
19 ~~statement specified in paragraph (1) of subdivision (b) of Section~~
20 ~~2924c.~~

21 ~~(2) Not less than three months shall elapse from the filing of~~
22 ~~the notice of default.~~

23 ~~(3) After the lapse of the three months described in paragraph~~
24 ~~(2), the mortgagee, trustee or other person authorized to take the~~
25 ~~sale shall give notice of sale, stating the time and place thereof, in~~
26 ~~the manner and for a time not less than that set forth in Section~~
27 ~~2924f.~~

28 ~~(b) In performing acts required by this article, the trustee shall~~
29 ~~incur no liability for any good faith error resulting from reliance~~
30 ~~on information provided in good faith by the beneficiary regarding~~
31 ~~the nature and the amount of the default under the secured~~
32 ~~obligation, deed of trust, or mortgage. In performing the acts~~
33 ~~required by this article, a trustee shall not be subject to Title 1.6c~~
34 ~~(commencing with Section 1788) of Part 4.~~

35 ~~(e) A recital in the deed executed pursuant to the power of sale~~
36 ~~of compliance with all requirements of law regarding the mailing~~
37 ~~of copies of notices or the publication of a copy of the notice of~~
38 ~~default or the personal delivery of the copy of the notice of default~~
39 ~~or the posting of copies of the notice of sale or the publication of~~
40 ~~a copy thereof shall constitute prima facie evidence of compliance~~

1 with these requirements and conclusive evidence thereof in favor
2 of bona fide purchasers and encumbrancers for value and without
3 notice.

4 (d) All of the following shall constitute privileged
5 communications pursuant to Section 47:

6 (1) The mailing, publication, and delivery of notices as required
7 by this section.

8 (2) Performance of the procedures set forth in this article.

9 (3) Performance of the functions and procedures set forth in
10 this article if those functions and procedures are necessary to carry
11 out the duties described in Sections 729.040, 729.050, and 729.080
12 of the Code of Civil Procedure.

13 (e) There is a rebuttable presumption that the beneficiary
14 actually knew of all unpaid loan payments on the obligation owed
15 to the beneficiary and secured by the deed of trust or mortgage
16 subject to the notice of default. However, the failure to include an
17 actually known default shall not invalidate the notice of sale and
18 the beneficiary shall not be precluded from asserting a claim to
19 this omitted default or defaults in a separate notice of default.